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Fish and Wildlife Service: Compensation to Local Governments

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Summary

Many counties are compensated for the presence of federal lands within their boundaries because these lands are exempt from local taxes. Counties with lands under the primary jurisdiction of the Fish and Wildlife Service (FWS) are compensated through the National Wildlife Refuge Fund (NWRF). Counties have argued that the program is underfunded; in some instances, counties raise lack of funding as an argument against the establishment of new refuges. At the same time, some hold that budget constraints argue for a reduction in the program. Congress has begun to examine the program for possible changes.

Lands eligible for NWRF payments are largely in the National Wildlife Refuge System, but certain other FWS lands are included as well. Under the 1935 Refuge Revenue Sharing Act (16 U.S.C. §715s), NWRF was conceived as a program to share revenues from activities such as grazing or timber harvest on refuge lands, and such receipts are permanently appropriated to the fund. However, revenue-generating activities were (and are) often incompatible with refuge purposes and many refuges generate no revenue. In such situations, counties received no compensation from the federal government for the presence of the federal land. To address this perceived gap in the program, the law was amended in 1978 to add other payment criteria. Among these criteria was a payment option based on fair market value in the case of acquired lands. It became apparent almost immediately that revenues were not sufficient to meet the payment formula specified in the amended law. Congress has repeatedly appropriated additional funds to supplement the revenue stream. But the additional amounts appropriated have very rarely met the formula level, and never in the last decade. Recent Administration proposals for substantial funding reductions have intensified congressional interest. The Administration argues that the savings are justified and that refuges add few costs to counties and provide economic benefits from increased tourism.

Under NWRF, payments are distributed through a complex formula to counties with FWS lands, with different formulas for lands reserved from the public domain (that is, obtained from a sovereign power) and acquired lands (that is, those purchased from or donated by any entity other than a sovereign power). In turn, public domain lands in the System are also eligible for Payments in Lieu of Taxes (PILT; 31 U.S.C. §6901), which provides additional payments to local governments. Acquired FWS lands are not eligible for PILT.

When NWRF is not fully funded, the reluctance of some state and local governments to see lands within their boundaries acquired for addition to the System may be due in part to lost property tax revenues. As Congress debates changes in NWRF, several issues stand out as part of the debate:

- The NWRF payment formula is causing a rapid increase in authorized payment levels.
- Current NWRF receipts are sufficient to provide only a small fraction of the authorized formula, even without the increasing authorized payment levels.
- PILT payments, at least through FY2014, are mandatory spending, while NWRF payments are dependent on annual appropriations for the bulk of the program.
- PILT payments are provided only for public domain lands within the System, and not for other FWS lands.

Contents

Introduction.....	1
What Lands Are Under the Jurisdiction of FWS?	3
Which FWS Lands Are Eligible for NWRF?	5
What Are the Sources of Revenue?	6
How to Calculate a County’s NWRF Payment.....	8
Calculating Payments: The PILT Overlay	11
Special Exceptions to the Rules.....	11
Authorized Levels and Appropriations	12
Possible Changes to NWRF.....	14

Figures

Figure 1. National Wildlife Refuge Fund: Authorization Levels, FY1978-FY2013	2
Figure 2. Receipts, Appropriations, and Authorizations for NWRF, FY1978-FY2013.....	8
Figure 3. Calculating an Individual County’s NWRF Payment.....	9
Figure 4. Payments as Percent of Authorized Level, FY1978-FY2015.....	13

Tables

Table 1. Summary of FWS Lands by Category, FY2013	3
Table 2. Lands Under the Jurisdiction of the Fish and Wildlife Service.....	4
Table 3. Lands Eligible for Payments Under NWRF: Acquired Only.....	6
Table 4. Gross Receipts from National Wildlife Refuges, FY2012.....	7

Contacts

Author Contact Information.....	16
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Introduction

Federal lands cannot be taxed by state and local governments.¹ However, state and local governments have argued that federal lands are not only lost to the tax base, but also impose a burden on local taxpayers through demands for services such as law enforcement or search and rescue actions, which are commonly supported by local taxes. As a result, Congress has enacted several federal programs to offset the loss to the local tax base, even if the programs are not designed to offset that loss on a dollar-for-dollar basis. Congress is re-examining these programs for several reasons: continuing concerns expressed by local governments about the adequacy or fairness of the programs, rising payment levels based on current formulas, interest in decreasing the deficit, and expiration of mandatory spending for some of the programs.

Most of these programs are under the jurisdiction of the Forest Service (FS), the Bureau of Land Management (BLM), the Fish and Wildlife Service (FWS), and the Department of the Interior (DOI).² The program for FWS lands in the National Wildlife Refuge System (hereinafter referred to as the System) was enacted in 1935 and has been amended extensively since that time.³ Like many federal land payment programs, its original emphasis was on sharing any revenue generated on the federal lands with local or state governments, as shown by its original name: the Refuge Revenue Sharing Fund (though now it is more commonly called the National Wildlife Refuge Fund, or NWRF). Some of the federal payment programs restrict local use of the funds to some specific purpose, such as roads or schools. Others allow the funds to be used for any governmental purpose; NWRF falls in the latter category. Many of these programs, including NWRF, have become increasingly complex over time.

The 1978 amendments to the program provided that NWRF payments to local governments are based on a complex formula; the authorized funding level varies from one year to the next, based on changes in the data used in the formula. The resulting authorization level has increased more than 400% between FY1991 and FY2013. (See **Figure 1.**) In the same period, the amount of land potentially eligible for NWRF payments has gone from 86.3 million acres to 91.0 million acres,⁴ an increase of only 5.4% and clearly insufficient to explain the increase in the authorized funding level. The question is—what explains the large increase in the authorized levels? The answer, explained below, lies in the formula, particularly in payments for lands purchased by or donated to FWS.

The total payment a county receives for federal lands in its jurisdiction is further complicated by the interaction of NWRF and the Payments in Lieu of Taxes (PILT) program, a broadly applicable federal land payment program for county governments, which uses a different payment formula. PILT payments are managed by DOI.⁵

¹ The Constitution gives Congress exclusive authority over federal lands. (Art. IV, Sec. 3, Cl. 2 states: “The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States....”) Additionally, where a state was made via federal legislation, most states had to cede the right to tax any lands held by the United States, as a condition of becoming a state. (For example, see 13 Stat. 30, Sec. 4 (Nevada), and 28 Stat. 107, Sec. 3 (Utah).)

² For discussion of some of these other programs, see CRS Report RL30335, *Federal Land Management Agencies’ Mandatory Spending Authorities*, by (name redacted) and (name redacted).

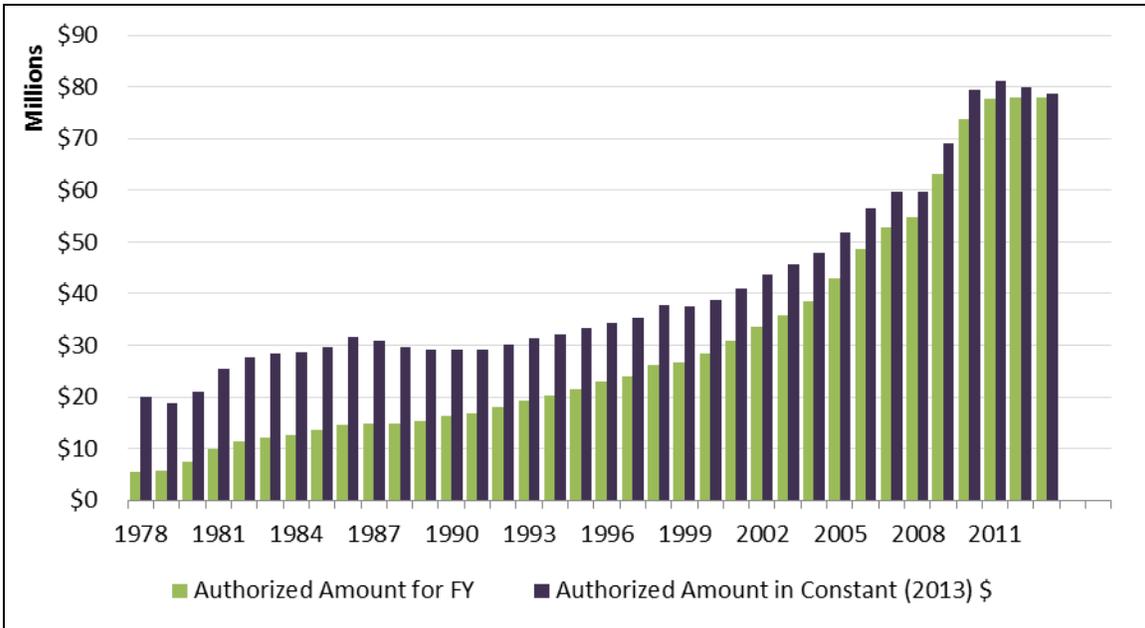
³ Act of June 15, 1935; 49 Stat. 383; 16 U.S.C. §715s, as amended. Major changes were made in 1978 in P.L. 95-469.

⁴ These lands consist of 81.4 million acres reserved from the public domain plus 9.6 million acres of acquired lands.

⁵ See CRS Report RL31392, *PILT (Payments in Lieu of Taxes): Somewhat Simplified*, by (name redacted), for a (continued...)

Besides differing formulas, there is another distinction between NWRF and payment programs for FS and BLM lands. The FS and BLM payment programs for local governments have usually had sufficient revenues from the multiple uses of their lands to fund most of their payment programs. In contrast, FWS lands have never generated sufficient revenue to fund NWRF fully since the current formula was created in 1977. Supplements from annual appropriations were authorized, beginning with the 1980 payments. However, these supplements have fallen below the levels authorized in the formula in all years except 1981. Since 1982, NWRF payments have ranged from as much as 93% of the authorized amount in FY1991 to a low of 22% in FY2010. Partial payment under NWRF has meant that the effect on local revenues has been more pronounced in counties with FWS lands than in counties with other federal ownerships. This loss is one reason for some local governments' resistance to the creation of refuges or waterfowl production areas.⁶

Figure I. National Wildlife Refuge Fund: Authorization Levels, FY1978-FY2013
(in millions of dollars)



Source: CRS, based on data from Fish and Wildlife Service, Realty Office. Personal communication, April, 2014.

This report describes the key features of NWRF: the lands under FWS jurisdiction, the eligibility of most of those lands for NWRF payments, the sources of revenue for the fund, the payment formula for calculating an individual county's payments, the PILT payments available for certain FWS lands, some exceptions to normal authorized payment calculations, changing authorization levels, and falling annual appropriations. It concludes with a review of options for changes in the program.

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description of this program.

⁶ For examples of such concerns, see <http://www.tyreny.com/about.php> and http://www.propertyrightsresearch.org/articles4/dialogues_with_agriculture.htm.

What Lands Are Under the Jurisdiction of FWS?

Lands and waters under FWS jurisdiction fall in six management categories. (See **Table 1.**) Three of these categories, taken together, constitute the National Wildlife Refuge System (150.3 million acres). The best-known and oldest parts of the system are the *National Wildlife Refuges* themselves. Another category is *Waterfowl Production Areas*, which are defined as “Refuge System lands comprised of small natural wetlands and grasslands that provide breeding, resting, and nesting habitat for millions of waterfowl, shorebirds, grassland birds, and other wildlife.”⁷ Roughly 95% of WPA lands are in Iowa, Minnesota, Montana, North Dakota, and South Dakota. *Coordination Areas* are defined as “Refuge System lands managed by states under cooperative agreements between [FWS] and state fish and wildlife agencies”⁸ regardless of actual ownership of the land. These three categories, together forming the System, constitute 49% of the lands under FWS jurisdiction.

Table 1. Summary of FWS Lands by Category, FY2013

Category	Total Acres
National Wildlife Refuges	146,294,114
Waterfowl Production Areas	3,712,623
Coordination Areas	257,488
Total Refuge System	150,264,225
Administrative Sites	904
National Fish Hatcheries	21,678
National Monuments	156,987,800
Total Outside Refuge System	157,010,383
Grand Total	307,274,608

Source: U.S. Fish and Wildlife Service. *Statistical Data Tables for Lands Under Control of the Fish and Wildlife Service (as of 9/30/2013)*, http://www.fws.gov/refuges/realty/archives/pdf/2013_Annual_Report_of_LandsDataTables.pdf.

In addition to the three categories making up the System, there are three more categories of lands under FWS ownership or administration (157.0 million acres). *Administrative Sites* are “[FWS]-owned maintenance facilities, offices, and off-site visitor centers that are not located on Refuge System lands.”⁹ *National Fish Hatcheries* are facilities “where fish are raised. Hatchery objectives are to replenish depleted stocks, to mitigate federal water projects, to assist with the management of fishery resources on federal and Indian lands, and to enhance recreational activities.”¹⁰ *National Monuments*, including “marine national monuments are areas designated by Presidential Proclamation and established under the authority of the Antiquities Act of 1906.... For the purposes of this report, this category includes only the Service-managed or co-managed

⁷ U.S. Fish and Wildlife Service. *Statistical Data Tables for Lands Under Control of the Fish and Wildlife Service (as of 9/30/2013)*, http://www.fws.gov/refuges/realty/archives/pdf/2013_Annual_Report_of_LandsDataTables.pdf. P. 1 of online version. (Hereinafter cited as *FY2013 Annual Report*.)

⁸ *FY2013 Annual Report*, p. 1 of online version.

⁹ *FY2013 Annual Report*, p. 1 of online version.

¹⁰ *FY2013 Annual Report*, p. 1 of online version.

areas within a national monument that are outside the Refuge System. National monument areas within the Refuge System are counted in the ‘National Wildlife Refuges’ category total.”¹¹ The FWS lands and waters that are not part of the Refuge System constitute 51% of lands under FWS jurisdiction. With the System lands, they bring FWS land (and water) jurisdiction to 306.1 million acres.

Table 2. Lands Under the Jurisdiction of the Fish and Wildlife Service

(in acres, as of September 30, 2013)

	Refuge System	Other FWS	Total ^a
Reserved from Public Domain			
Primary Jurisdiction	81,441,164 ^{b, c}	3,660	81,444,824
Secondary Jurisdiction	597,891	987	598,878
Marine National Monuments	52,819,352	156,954,835	209,774,189^d
Acquired by Other Federal Agency			
Primary Jurisdiction	3,704,907 ^b	2,430	3,707,337
Secondary Jurisdiction	983,993	36,627	1,020,620
Purchased by FWS	5,193,688 ^b	6,173	5,199,861
Donated	819,646 ^b	1,393	821,039
Easements			
Acquired by Other Federal Agency	163,326	182	163,509
Purchased by FWS	3,131,536	510	3,132,045
Donated	663,656	3,189	666,845
Agreements or Leases	745,066	397	745,462
Total^a	150,264,225	157,010,383	307,274,608

Source: U.S. Fish and Wildlife Service. *Statistical Data Tables for Lands Under Control of the Fish and Wildlife Service (as of 9/30/2013)*, http://www.fws.gov/refuges/realty/archives/pdf/2013_Annual_Report_of_LandsDataTables.pdf. Table 1.

- a. Totals may not agree, due to rounding.
- b. Eligible for payments under NWRF.
- c. Eligible for payments under PILT.
- d. The great majority of these acres are submerged lands outside the jurisdiction of a state or county. A small fraction generates payments under NWRF. (See “Which FWS Lands Are Eligible for NWRF?” below.)

FWS lands can be further categorized based on whether (a) they are public domain lands or acquired lands;¹² (b) whether FWS has sole or primary jurisdiction over the lands or instead has only secondary jurisdiction;¹³ (c) for acquired lands, whether some other federal agency initially

¹¹ *FY2011 Annual Report*, p. 1 of online version. For more on national monuments, see CRS Report R41330, *National Monuments and the Antiquities Act*, by (name redacted) and (name redacted).

¹² *Public domain lands* are those lands which the United States obtained from a sovereign nation. *Acquired lands* are those which the United States obtained from some other entity, such as a state or individual.

¹³ FWS has *secondary jurisdiction* when some other entity actually owns or controls management of the land, and FWS activities are carried out only to the extent that they are compatible with the primary owner’s aims. FWS has such (continued...)

acquired the lands and then transferred them to FWS, or whether FWS acquired the lands directly from a non-federal source as either a gift or a purchase; and (d) whether FWS jurisdiction rests on an agreement, easement, or lease, rather than outright ownership of the land. (See **Table 2.**)

Which FWS Lands Are Eligible for NWRP?

Only certain lands are eligible for NWRP payments. Criteria for eligibility are as follows:

- For lands reserved from the public domain, payments to counties only if or when the lands in the refuge generated net revenues in the previous year.¹⁴
- For acquired lands, including lands received as gifts, payments according to a formula involving four payment options (described below). See **Table 3** for classes of acquired lands eligible for NWRP.
- Lands under the sole or primary jurisdiction of FWS.
- Lands (whether acquired or reserved) not otherwise excluded from payments. (See “Special Exceptions to the Rules.”)

The following FWS lands do not receive NWRP payments:

- Lands reserved from the public domain in those fiscal years when they generated no net revenues in the preceding year.
- Lands over which FWS has only secondary jurisdiction. (These are 1.6 million acres or 0.5% of all lands managed by FWS; of these, 0.6 million acres are reserved from the public domain, and 1.0 million acres were acquired by another federal agency.) Similarly, wildlife coordination areas (257,488 acres) are not eligible because they are managed by the states (under cooperative agreements) and not by FWS.
- Acquired lands in U.S. Minor Outlying Islands¹⁵ (54.9 million acres or 18% of area under FWS management). These areas are largely submerged lands; islands found in these areas are uninhabited for the most part.
- Lands in American Samoa (8.6 million acres or 3% of area under FWS management). These areas are also largely submerged lands.
- Any other submerged lands outside the jurisdiction of a state or territory; these lands are largely in national monuments.

(...continued)

arrangements for certain areas managed by the Bureau of Reclamation and the Army Corps of Engineers, for example.

¹⁴ Many refuges lie in more than one county. In such a case, once FWS has calculated 25% of the net revenues to determine the payment level, a county would get a payment in proportion to the amount of land in the refuge that lies within the county. For example, if 40% of the eligible land in a refuge fell within the county’s boundary, it would get 40% of the payment, even if all of the refuge’s revenue-generating activity occurred outside the county.

¹⁵ The Minor Outlying Islands are listed in the *FY2013 Annual Report*: Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Marianna Arc of Fire, Mariana Trench, Midway Atoll, Navassa Island, Palmyra Atoll, and Wake Atoll. All are in the Pacific Ocean, except Navassa, which is in the Caribbean.

Any given piece of land may be excluded for more than one reason. For example, 597,891 acres are excluded because they are public domain lands under only secondary jurisdiction of FWS, and therefore are not eligible for NWRP payments; even were they under primary jurisdiction of FWS, the lands would receive no payment unless they generate net revenues. Either condition would result in no payment. Moreover, exclusion may be temporary: FWS public domain lands may generate net revenues—and therefore NWRP payments—in some years and not in others.

Table 3. Lands Eligible for Payments Under NWRP: Acquired Only
(to nearest acre)

Category	Acquired by Other Federal Agency; FWS has Sole or Primary Jurisdiction	Donated	Purchased by FWS	Total
National Wildlife Refuge	3,537,680 ^a	797,599	4,476,682 ^b	8,811,961
Waterfowl Production Area	27,974	22,023	711,294	761,291
Administrative Site	9	33	734	776
National Fish Hatchery	2,421	1,360	5,439	9,220
Total	3,568,084	821,015	5,194,149	9,583,248

Source: FY2013 Statistical Data Tables. Compiled from Table 1.

- a. This figure does not include 52,819,352 acres in U.S. Minor Outlying Islands that are excluded from receiving NWRP payments. (See “Special Exceptions to the Rules,” below.) These excluded acres are largely under water, and islands in these areas rarely have permanent residents.
- b. This figure excludes 444 acres in Palmyra Atoll NWR (an island without permanent inhabitants in the mid-Pacific Ocean) acquired from a non-resident owner.

What Are the Sources of Revenue?

NWRP payments to counties are mandatory, but only to the extent of receipts.¹⁶ The sale or lease of goods and services from FWS lands (public domain or acquired) are the chief sources of revenue. These include revenues from grazing, mineral development (though not oil and gas revenues from leases on lands reserved from the public domain),¹⁷ sale of forest products, and

¹⁶ Spending is considered mandatory if it is provided or controlled in authorizing acts; familiar examples include Social Security and Medicare payments. (These two examples are also supported by receipts, but expenditures are not limited by the taxes collected to support the programs.) For the purposes of this report, spending is considered to be “indefinite” if the payments are authorized to continue indefinitely (in the absence of new legislation to end or modify the program). See CRS Report R42388, *The Congressional Appropriations Process: An Introduction*, by (name redacted).

¹⁷ Within NWRP, FWS has a fund which accounts for moneys received from permittees for energy exploration under §1002 and §1008 of the Alaska National Interest Lands Conservation Act (ANILCA, P.L. 96-487). Because funds in the ANILCA subaccount are designed only to cover expenses, and any excess is returned to permittees rather than becoming available for payments to counties, the ANILCA subaccount will be ignored for the purposes of this report. Other oil and gas leasing on FWS lands is administered by BLM, and receipts are collected by the Office of Natural Resources Revenue in DOI. FWS receives only the portion related to “leases for public accommodations or facilities” (continued...)

other activities. (See **Table 4.**) In FY2012, these receipts totaled \$7.3 million. The Secretary of the Interior deducts any direct FWS expenses incurred to generate the revenues from the fund; in FY2012, these deductions totaled \$3.3 million, for a net of \$4.0 million available for payment under NWRF in FY2013.¹⁸ To the extent that the permanently appropriated net revenues are insufficient to meet the amounts calculated under the payment formulas, the Refuge Revenue Sharing Act authorizes discretionary¹⁹ appropriations in annual spending bills to meet any shortfall.²⁰ If amounts are still insufficient to meet the authorized level, then each county is paid a pro rata share of the amount authorized in the formula. From FY1978 to FY2012 net receipts have not been sufficient to meet the payment formula. (See **Figure 2.**) Additional discretionary appropriations have more than doubled the available funds, but the totals of receipts and appropriations have provided less than the authorized level in all but one year (1981) since NWRF reached its modern form in 1978.

Table 4. Gross Receipts from National Wildlife Refuges, FY2012
(dollars)

Source	Amount
Grazing	959,576.93
Haying	299,405.88
Forest products	2,265,817.50
Raw water	84,245.84
Mineral resources—oil and gas	2,561,410.19
Mineral resources—sand and gravel	0.00
Surplus animal disposal	425,513.90
Furbearers (trapping fees)	32,378.48
Public use revenues—concession fees	285,708.99
Public use revenues—user fees	197,104.15
Other	837,324.39
ANILCA ^a	30,733.26
Total gross receipts	7,979,219.51

Source: U.S. Dept. of the Interior, Fish and Wildlife Service. Division of NWRS Budget, Performance and Workforce. FY2012 is the most recent fiscal year with full data.

a. Alaska National Interest Lands Conservation Act (P.L. 96-487).

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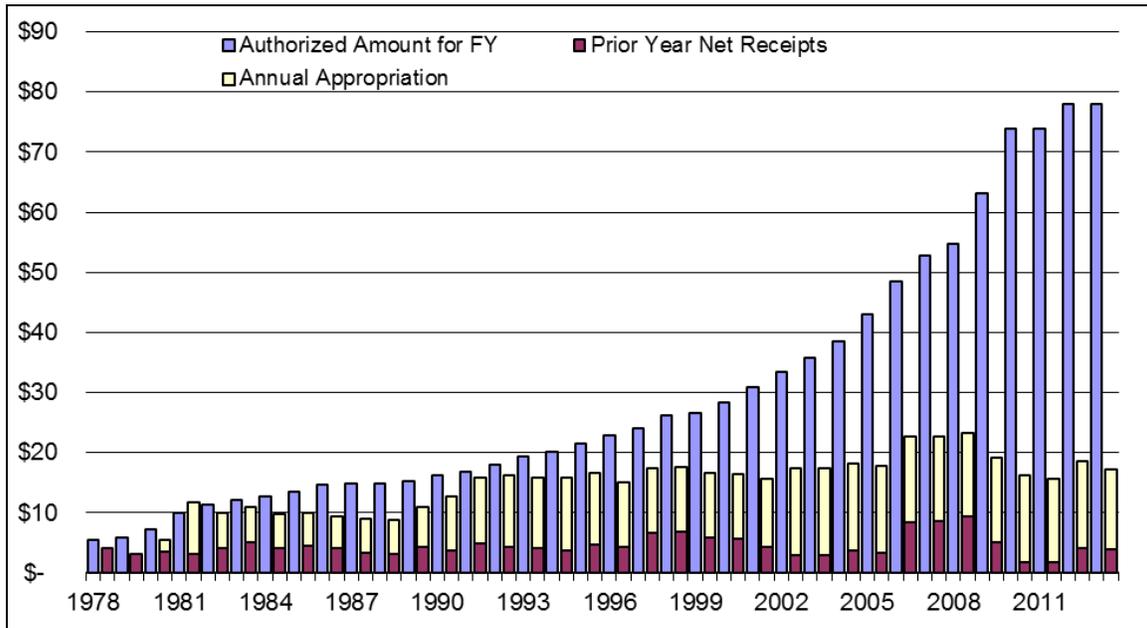
(16 U.S.C. §715s(a)), and not the portion related to bonus bids, rents, and royalties.

¹⁸ Expenses that may be deducted from receipts include not only the costs of managing each specific revenue source, but also costs of appraisals of eligible lands.

¹⁹ Discretionary spending is provided and controlled through annual appropriations acts. For further information on discretionary spending, see CRS Report R42388, *The Congressional Appropriations Process: An Introduction*, by (name redacted).

²⁰ 16 U.S.C. §715s(d).

Figure 2. Receipts, Appropriations, and Authorizations for NWRF, FY1978-FY2013
(current dollars, in millions)



Source: CRS, based on data from Fish and Wildlife Service, Realty Office. Personal communication, April 2014.

How to Calculate a County's NWRF Payment

To calculate the total authorized NWRF payment for the areas under FWS jurisdiction, several questions must be answered first for each county individually:

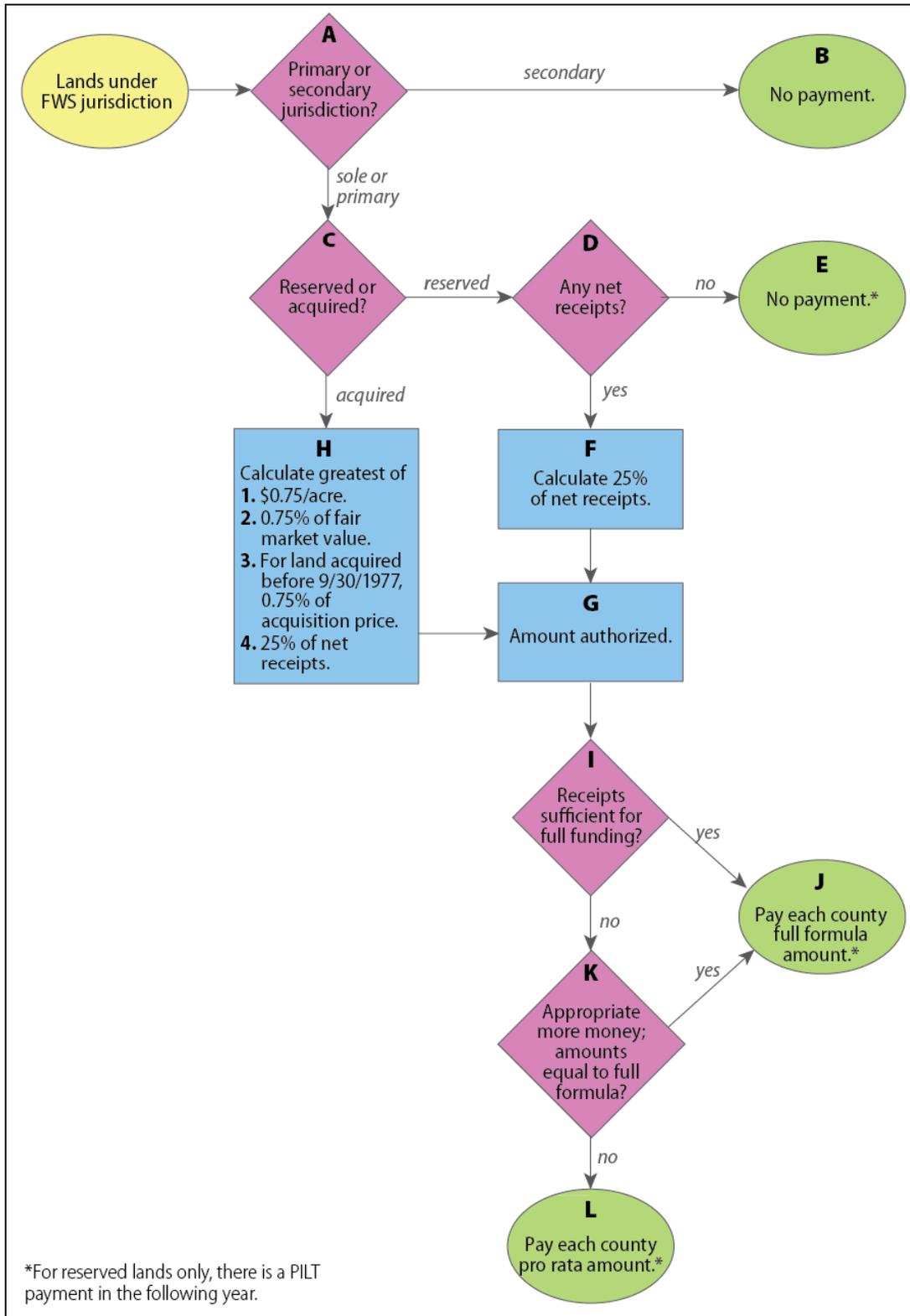
1. Does FWS have primary or sole jurisdiction (versus secondary jurisdiction) over the land?
2. Is the land reserved from the public domain, or was it acquired by the United States?
3. For both acquired and public domain land, what were the *net* receipts from the land?
4. For acquired lands only, what is the fair market value (FMV) of the land? And was the land acquired before September 30, 1977? If so, what was the purchase price?

With this information, each county's authorized level can be calculated, and the sum of these values provides the total authorized level for the entire program. **Figure 3** shows the steps for calculating an individual county's payment.

Boxes A and B: Primary or Secondary Jurisdiction. NWRF provides a payment for FWS land that is under the sole or primary jurisdiction of the agency, but formulas differ for acquired lands versus reserved lands. There is no payment for lands under secondary FWS jurisdiction (Box B).

Box C: Reserved or Acquired. This distinction must be made because different formulas apply to the two types of lands.

Figure 3. Calculating an Individual County's NWRF Payment



Source: Created by CRS, based on Refuge Revenue Sharing Act, 16 U.S.C. §715s.

Boxes D, E, and F: Reserved Lands Option. If the reserved lands have no *net* receipts, there will be no payment (Box E). If there are net receipts, counties are paid 25% of the net receipts (Box F).²¹ This is the only NWRP payment option for such lands. Depending on revenues and costs, these lands might generate payments in some years and not others. However, as noted previously, these lands are also eligible for PILT payments.

Box G: Amount Authorized. The result of the calculations, under either Box F or H, is the amount authorized.

Box H: Acquired Lands Options. Acquired lands generate payments based on the greatest of these four options:

Box H(1): \$0.75/acre.

Box H(2): 0.75% of current FMV. Regulations describe procedures for determining FMV.²² The statute specifies that FMV is to be reappraised at least once every five years.²³ While this option may be viewed as corresponding to local property taxes, the resulting payment is likely to differ from the amount that a private owner would pay in real property taxes.²⁴ For example, property tax rates vary among jurisdictions, and range from 0.40% to 2.57%, according to one analysis.²⁵

Box H(3): 0.75% of the acquisition cost of the land for lands under FWS supervision on September 30, 1977.²⁶ The current calculated refuge payments for lands acquired before September 30, 1977, cannot fall below the amount as calculated on September 30, 1977. At that time, the payment was 0.75% of the purchase price, not the fair market value.

Box H(4): 25% of net receipts. Expenses for producing the revenue or for activities related to revenue are deducted from gross receipts; expenses of general land or wildlife management are not.

Box I: Receipts Sufficient? Once the amount authorized is calculated (Box G), this amount is compared with the national total of receipts. Theoretically, if the net receipts are sufficient to meet the formula levels, then each county is paid the full amount (Box J). However, net receipts have never yet been sufficient to meet formula levels.²⁷

²¹ If the FWS land is in more than one county, each county will receive a proportionate share, based on the fraction of the acreage found in that county.

²² 50 C.F.R. §34.7.

²³ 16 U.S.C. §715s(c)(4)(B)(ii).

²⁴ The FWS land may also place fewer demands on local governments for services such as schools, sewers, roads, emergency services, etc., than private lands do.

²⁵ Data from Moody's Economy.com, table reported in *New York Times*, April 10, 2007, <http://www.nytimes.com/2007/04/10/business/11leonhardt-avgproptaxrates.html>.

²⁶ 16 U.S.C. §715s(c)(4)(A)(ii). This floor provision, enacted in 1978 in P.L. 95-469 (and referring to an earlier provision enacted in 1964 in P.L. 88-523), may have less practical effect over time as land values increase. As a practical matter, however, the provision means that there are not three possible payment options for acquired lands, but four—even if the fourth is rarely chosen.

²⁷ The arrow between Boxes I and J (labeled “yes”) is hypothetical: this situation has never occurred.

Boxes J, K, and L: Appropriate Additional Funds. If the net receipts are not sufficient to meet the formula, the authorizing statute allows annual appropriations to make up the difference.²⁸ To date, Congress has approved additional funds to supplement the net receipts. (See **Figure 2**.) If these supplements, plus receipts, are sufficient to meet the authorized levels, each county is paid the full amount under the formula (Box J). If not, each county receives a pro rata amount (Box L). Since the modern program began making payments in 1978, the additional appropriations, plus the net receipts, have fallen short of the authorized level except in FY1981, when funding reached 118% of the amount authorized in the formula.²⁹ The decline appears to be an effect of the formula creating a growing authorization level, rather than marked reductions in annual appropriations. (See “Authorized Levels and Appropriations,” below for discussion.)

Calculating Payments: The PILT Overlay

While the PILT program is not exclusively for FWS lands and is not run by FWS, it does affect total federal payments to local governments for some FWS lands. Specifically, for FWS lands that are in the System and only for those reserved from the public domain (calculated by DOI at 85.2 million acres for the payments of FY2013), DOI calculates an additional payment under PILT.³⁰ (See Boxes E, J, and L.) Any revenues paid to the county under NWRP are deducted from the PILT payment made the following year. PILT payments are mandatory spending through FY2014. For the FWS lands in question, the result is that when NWRP payments fall below the authorized level, the difference may be made up (possibly only in part, in years when PILT is not fully funded) by the PILT payment the following year.³¹

Special Exceptions to the Rules

Besides the general criteria described above, there are also specific criteria that affect individual states or territories, or affect calculation of how many acres are eligible for NWRP payments or later PILT payments.

One of the exceptions occurs in Alaska. The *FY2013 Annual Report* lists a total of 76,241,824 acres of FWS public domain land that would qualify for PILT payments. This total is based on new survey data, which the state disputes. As a result of the dispute, FWS reports a larger figure (80,342,130 acres) for the PILT calculations, based on a historic total previously used. Because of the complexity of the NWRP and PILT formulas, it is not clear how much greater a payment Alaska boroughs receive based on the older figures, nor which boroughs receive the greatest benefit.

In Hawaii, the acres of System lands reserved from the public domain land, shown in the *FY2013 Annual Report* (254,418 acres), also differ from those used to calculate PILT. There is an

²⁸ 16 U.S.C. §715s(a)(3).

²⁹ The reason for this mismatch is not clear, although counties were not paid amounts above the authorized formula. This condition has not been repeated. Under the terms of 16 U.S.C. §715s(e), if receipts exceed the amount needed under the formula, the excess is transferred to the Migratory Bird Conservation Fund (16 U.S.C. §715-715r). However, disposition of excess funds is not specified if receipts plus appropriations exceed this target, as they did in 1981.

³⁰ 31 U.S.C. §§6901-6907. For more on PILT, see CRS Report RL31392, *PILT (Payments in Lieu of Taxes): Somewhat Simplified*, by (name redacted).

³¹ However, see “Special Exceptions to the Rules” below, regarding acreage in Alaska.

unresolved dispute between FWS and the state about 252,511 acres of submerged lands. As in other areas, FWS does not include these submerged lands as eligible for NWRF and PILT. There remain 1,907 acres reserved from the public domain in the state that are not submerged; these acres are reported as eligible for PILT.

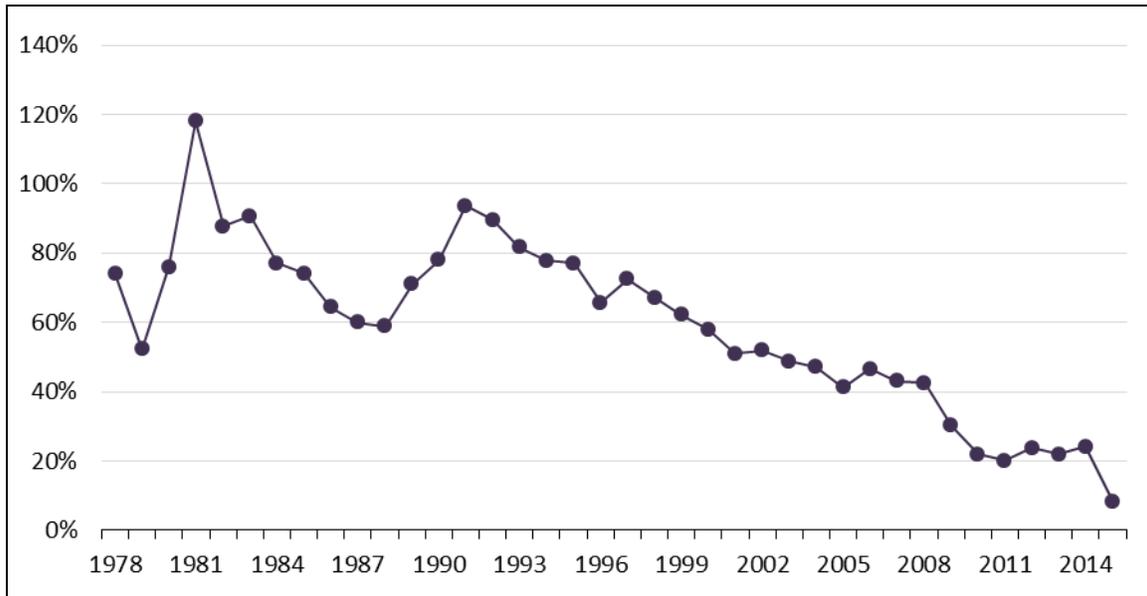
While the Refuge Revenue Sharing Act lists some territories as eligible for NWRF payments, American Samoa is not listed, and therefore it receives no payment.³² The 1,613 acres of System lands acquired initially by the U.S. Navy in American Samoa do not receive PILT payments either, both because they are acquired and because the territory is not defined as a unit of local government for purposes of PILT.³³

Authorized Levels and Appropriations

As shown in Figure 4, the percent of the NWRF authorized level that has been paid to county governments has fallen steadily since 1991. Two factors help explain the decline. First, and most strongly, authorization levels calculated under the statute's formula have increased markedly. (See Figure 1.) Second, total appropriations (net receipts plus annual appropriations) have declined in the last five years, although the decline shown in Figure 4 spans the last 20 years. As discussed below, the falling percent is primarily the result of the increasing authorization levels based on the formula in the statute. (See Figure 1 and Figure 2.)

³² In addition, nearly all of the 8.6 million acres of FWS land in the area is submerged and outside of territorial jurisdiction, and therefore not qualified for payments for those reasons as well. If there were FWS lands in or around the Commonwealth of the Northern Mariana Islands (CNMI), they would also be excluded from payments, because CNMI (like American Samoa) is not listed as eligible for payments. However, no such lands or submerged lands have been designated in CNMI.

³³ 31 U.S.C. §6901(2)(A). Up through the *FY2011 Annual Report*, these lands were considered public domain lands. However, in the *FY2012 Annual Report*, FWS began to report American Samoa as having the same acreage in the same refuge (Rose Atoll NWR), but began to list it as lands acquired by another agency. According to the refuge's website: "Following years of civil war among Samoan factions and of rivalry between the United States, Germany, and Great Britain, the Tripartite Convention of 1899 partitioned the Samoan archipelago between Germany and the United States. Eastern Samoa, including Rose Atoll, became a U.S. territory. The first governor, B.F. Tilley, visited the Atoll in 1900, hoisted the U.S. flag, and planted coconuts. In 1920, Governor W.J. Terhune landed on the Atoll, erected a sign to warn trespassers, and planted more coconuts. President Franklin Delano Roosevelt designated the Rose Atoll a Naval Defense Area in 1941, but it was never used for that purpose." Transfer from the Navy to FWS occurred in 1973. (See <http://www.fws.gov/refuges/profiles/History.cfm?ID=12514>.)

Figure 4. Payments as Percent of Authorized Level, FY1978-FY2015

Source: CRS, based on data from Fish and Wildlife Service, Realty Office. Personal communication, April, 2014.

Notes: For FY1981, net receipts plus appropriations totaled 118% of the authorized payment level. However, counties received only the authorized amounts. Point for FY2014 is an estimate; for FY2015, point assumes that Congress accepts President's proposal to eliminate annual appropriations for NWRP, and only receipts are distributed on a pro rata basis.

As **Figure 3** graphically demonstrates, the NWRP statute has only a limited number of potential causes for the increasing authorization levels.

- Are the net revenues increasing? If so, the increase would affect reserved lands with net revenues, and those acquired lands in counties paid under this option. But as **Figure 2** shows, net revenues have been fairly constant, and have declined in recent years. Increases in net revenues cannot explain the increase in the authorization level.³⁴
- Are the acres of eligible FWS lands increasing—or, more accurately, are they increasing commensurate with the increase in authorization? Lands and waters under FWS jurisdiction jumped from 88.8 million acres in 1981 to 307.3 million acres in 2013. But the great bulk of this increase is in the marine environment, in waters under the jurisdiction of no state or county government; these submerged lands can have no effect on NWRP payments. Therefore, increases in eligible FWS lands can explain only a part of the increase in authorization levels.
- Payment under the \$0.75/acre option for acquired lands seems inadequate to explain the rising authorization level as well, because the rate is constant, and as just noted, the increasing number of acres eligible for NWRP payments is not

³⁴ Net revenues in FY1991 were \$4.84 million; in FY2011 they were \$1.72 million—a drop of 65% over the 20-year period. By FY2013, net revenues increased to \$5.9 million. The marked dip in net revenues in the recent portion of that interval relates to concerted efforts by FWS to update appraisals of acquired lands; the result was a temporary reduction in net revenues.

sufficient to account for the authorization increase. Payments tied to purchase price before 1977 also cannot increase.

- Is the fair market value increasing? Only a substantial increase in the FMV of the acquired lands is left to account for the quadrupling of the authorized level. Such an increase is not surprising, given the general rise in real estate values up until the peak of the market in about 2007. Moreover, because FWS lands are re-appraised at about five year intervals, it seems reasonable to hypothesize that falling real estate values of the past few years generally will soon lead to decreases in the authorized levels for NWRP payments, followed by further increases as property values recover.

In sum, increasing FMVs appear to account for a substantial fraction of the increasing authorization, aided to a lesser extent by some increases in the number of acres eligible for payments. As a result of increasing FMVs, counties with lands having high FMVs receive an increasing fraction of funds appropriated to the NWRP.

Possible Changes to NWRP

There are few proposals in the 113th Congress to amend the NWRP program. Any effort to match the rapidly increasing authorization levels conflicts with increasing pressure to lower federal expenditures. For example, one recent issue has been whether to eliminate discretionary spending for NWRP. Specifically, for FY2012 through FY2015, the Administration proposed that Congress provide no annual appropriation for NWRP, allowing the program to draw funds based only on available receipts. If the proposal were accepted for FY2015, the Administration estimated that counties would receive approximately 6% of the authorized level. The Administration argued that the savings were justified, and that refuges added few costs to counties and provided economic benefits from increased tourism. Congress rejected the Administration's argument for each succeeding fiscal year. For FY2014, Congress appropriated \$13.23 million, down 8.6% from the FY2011 level of \$14.47 million (P.L. 112-74), before the proposed elimination of annual appropriations. FWS estimated that net receipts, combined with the appropriation level approved by Congress, are sufficient for counties to receive 24.4% of the authorized level in FY2014.

Besides eliminating annual funding, other options that Congress might consider include the following (in order of increasing payments to county governments):

1. Eliminate NWRP, and make no FWS lands eligible for PILT.
2. Eliminate NWRP, but make all lands now eligible for NWRP also eligible for PILT.
3. Make all FWS lands now eligible for NWRP payments also eligible for PILT payments, without eliminating NWRP.
4. Change the compensation formula under NWRP to decelerate future growth in authorization levels as land values rise, to bring the formula into accord with historic appropriation levels (mandatory plus annual) or with some alternative authorization level. (Depending on the specific changes, this option might change its rank in this list.)
5. Fully fund the existing NWRP program.

If the first option were chosen, there would be no federal payment to counties based on the presence of lands under FWS jurisdiction. Such legislation might specify a different distribution of net receipts, or allow net receipts to be deposited in the U.S. Treasury.

If the second option were chosen, the authorized payments for all eligible NWRF acquired lands with an FMV over \$338.67/acre would be reduced to \$2.54/acre at most.³⁵ Payments might be further reduced because of another PILT provision limiting payments based on county population levels. Public domain lands would be largely unaffected as they already receive PILT payments.

If the third of these options were chosen, public domain lands in the System would be unaffected because they already receive PILT payments. Those counties receiving their payments under the provision for 0.75% of FMV would likely increase their payments only marginally, because the top payment rate for PILT in FY2013 was \$2.54/acre. At a 0.75% tax rate, any land with a FMV greater than \$338.67/acre—a common occurrence in eastern states where the bulk of FWS acquired lands are found—would result in an NWRF authorized payment of more than \$2.54/acre. So the added PILT payments would still likely represent only a modest fraction of the authorized NWRF payment level for refuge lands with high FMVs. The lands outside the System (administrative sites, national fish hatcheries, and the non-submerged lands in those national monuments outside the System), if they are in the public domain but generate no revenue, currently receive no NWRF payment and no PILT payment. Counties with such lands (about 3,660 acres nationwide in FY2013) would receive a PILT payment for the first time under this option.

If the fourth option were chosen, several changes to the NWRF formula could reduce the authorized amount. Because the authorized amount is increasing as more acquired land is compensated under the FMV provision and as FMVs have increased, changes in this provision would be essential to lower the authorized amount. The reduction could be accomplished by lowering the rate below 0.75%, placing a cap on per-acre compensation, or eliminating this feature altogether and setting all compensation at some fixed rate.

For the fifth option, fully funding NWRF, no change in the authorizing statute would be required. In FY2014, full funding would have required the annual appropriation to increase from \$13.2 million to \$72.6 million, a 549% increase. Future increases would depend on whether FMVs increase and, to a lesser extent, on changes in revenues from FWS lands. A similar end could be accomplished if Congress changes the program to mandatory spending. However, in a climate of continuing efforts to lower federal spending, achieving full funding under either option would face substantial difficulties.

³⁵ At a tax rate of 0.75%, a payment of \$2.54 would occur if the land is valued at \$338.67. ($\$338.67 \times 0.0075 = \2.54 .) This is the maximum payment per acre under PILT for FY2013. If land is valued at a higher figure, it would still generate no more than \$2.54/acre for FY2013 under PILT.

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